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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

1 IN THE MATTER OF A SUBSTANTIAL )  
2 DEVELOPMENT PERMIT ISSUED BY MASON )  
3 COUNTY TO TWANOH FALLS BEACH CLUB, )  
4 INC. )  
5 M. W. and JUDY BRACHVOGEL, J. P. )  
6 BRENNAN, KENNETH McCRAW, F. J. )  
7 DONOVAN, JAY GOLDBERG, LARRY )  
8 GOLDBERG, JOE HUBACKA, MRS. ARNE )  
9 SUNDQUIST, GEORGE WANDEL, MRS. R. J. )  
10 ULTICAN, JR., J. D. EHRHART, )  
11 JANET REID PORTER, MR. and MRS. )  
12 CHARLES MANKE, MRS. FRANK DOLBY, )  
13 MRS. JAMES INGRAM, THOMAS B. )  
14 BRENNAN, BRUCE PARIS, AUBREY )  
15 SCHMIDT, MR. and MRS. RAYMOND )  
16 SUNDQUIST, E. G. WIESINGER, )  
17 ROBERT W and PHYLLIS MEYER, )  
18 E. SCOTT and ANNA MAE WETZEL, )  
HOOD CANAL ENVIRONMENTAL COUNCIL, )  
STATE OF WASHINGTON, DEPARTMENT )  
OF ECOLOGY and SLADE GORTON, )  
ATTORNEY GENERAL, )  
  
Appellants, )  
  
vs. )  
  
MASON COUNTY and TWANOH FALLS )  
BEACH CLUB, INC., )  
  
Respondents. )  
  
\_\_\_\_\_ )  
  
\_\_\_\_\_ )

SHB Nos. 140, 140-A and 140-B

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

1 THIS MATTER being three appeals from the issuance of a substantial  
2 development permit granted by Mason County to Twanoh Falls Beach Club,  
3 Inc.; having come on regularly for hearing before the Shorelines Hearings  
4 Board on the 4th and 5th days of September, 1974, at Shelton, Washington,  
5 and appellants, M. W. Brachvogel, et al. were represented by their  
6 attorney, John A. Petrich; Robert and Phyllis Meyer, et al. were repre-  
7 sented by their attorney, Philip M. Best; State of Washington, Department  
8 of Ecology and Slade Gorton, Attorney General, were represented by their  
9 attorney, Robert V. Jensen. The respondent, Twanoh Falls Beach Club, Inc.,  
10 was represented by its attorney, Mary Ellen Hanley; respondent, Mason  
11 County, did not appear; and Board members present at the hearing being  
12 Walt Woodward, Chairman; Robert E. Beaty, Presiding Officer; Chris Smith  
13 and Jerry Probst and the Board having considered the sworn testimony,  
14 exhibits, records and files herein and having entered on the 3rd day of  
15 October, 1974, its proposed Findings of Fact, Conclusions of Law and Order,  
16 and the Board having served said proposed Findings, Conclusions and Order  
17 upon all parties herein by certified mail, return receipt requested and  
18 twenty days having elapsed from said service; and

19 The Board having received exceptions to said proposed Findings,  
20 Conclusions and Order and having considered and denied same, and the  
21 Board being fully advised in the premises; now therefore.

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
23 Findings of Fact, Conclusions of Law and Order, dated the 3rd day of  
24 October, 1974, and incorporated by this reference herein and attached  
25 hereto as Exhibit A, are adopted and hereby entered as the Board's  
Final Findings of Fact, Conclusions of Law and Order herein.

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1 granted Shorelines Management Substantial Development Permit No. 24 to  
2 Twanoh Falls Beach Club, Inc. for a development on the shoreline of  
3 Hood Canal on a site seven and eight-tenths miles southwest of Belfair,  
4 Washington. The permit issuance was successfully challenged by the  
5 appellants, M. W. Brachvogel, et al. and Randy E. McIlraith, et al. on  
6 the issue of whether environmental factors were considered by the County  
7 Commissioners. M. W. Brachvogel, et al. v. Mason County, et al.,  
8 SHB Nos. 45 and 45-A (August 10, 1973). The matter was remanded to the  
9 Mason County Commissioners to

10 "Consider the environmental factors in the project and to make  
11 a determination, based on such consideration, as to (a)  
12 whether the project is or is not a major action significantly  
13 affecting the quality of the environment; (b) whether or not  
14 to require the preparation of an environmental impact statement,  
15 and (c) to consider the issuance of the substantial develop-  
16 ment permit in light of such determination." M. W. Brachvogel,  
17 et al. v. Mason County, et al., SHB Nos. 45 and 45-A, p. 10-11  
18 (August 10, 1973).

## 15 II.

16 After the Board's remand of the matter to the County, the Twanoh  
17 Falls Beach Club (TFBC) was requested to provide all the necessary  
18 information for writing an environmental impact statement (EIS),  
19 including the writing of such statement. The EIS was to be submitted  
20 to the County Commissioners for review.

## 21 III.

22 TFBC contacted David Desvoigne and employed him to prepare the  
23 requested draft EIS. In his preparation, Desvoigne looked at the site  
24 and contacted the State Department of Fisheries. There was no local  
25 government participation in the preparation of the draft, official or  
26 otherwise. There was no other government participation of any type,

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1 state, local or federal, in the draft preparation. Desvoigne was paid  
2 \$1,500 00 by TFBC for his services.

3 IV.

4 In November, 1973 Desvoigne submitted the draft EIS to Mason  
5 County's Planning Coordinator, James E. Connolly. Desvoigne thereafter  
6 did not draft any further documents for the County.

7 V.

8 Connolly reviewed the submitted draft statement for completeness  
9 and accuracy. He suggested that the County Commissioners contact TFBC  
10 about several inadequacies he discovered. The draft EIS was distributed  
11 to various interested parties and government agencies by the Commissioners  
12 on January 23, 1974 for review and comment. Comments on the draft EIS  
13 were received and assembled by Mason County. A summary to the comment  
14 was prepared by Connolly, along with his rebuttals and explanations to  
15 the comments. Connolly made certain changes of minor nature to the  
16 draft EIS. The sponsor's name was changed to read Mason County.  
17 Additionally, a period for response and a mailing list was added. There  
18 were no other changes in the EIS.

19 VI.

20 Connolly owns property near the shorelines. Although he favors the  
21 construction of a pier along the shorelines, the organization to which  
22 he belongs does not favor such a pier. Connolly disclaims that this  
23 case would constitute a precedent for proliferation of piers along the  
24 Hood Canal.

25 VII.

26 A public hearing was held on March 4, 1974 on the EIS for the

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1 purpose of receiving all responses to the draft EIS, and receiving any  
2 information obtained at the hearing, for incorporation into the final  
3 EIS. At the hearing, the Commissioners disclaimed any intent to use  
4 the draft EIS verbatim, but rather, to use the information it contained.  
5 The County Commissioners scheduled a later public hearing on March 25,  
6 1974 to review and adopt a final EIS and in order to give themselves  
7 time to review the materials then before them.

#### 8 VIII

9 On March 25, 1974 a public hearing to consider the EIS and comments  
10 was held. At this time specific problems with the EIS were discussed.  
11 These problems included that of the noise level, the economic impact,  
12 the alternative of moored floats, aesthetics, and the effect upon the  
13 neighborhood. The County Commissioners accepted the draft EIS, comments  
14 and the County's (Cornolly's) response as the final EIS. A meeting was  
15 scheduled on April 8, 1974 for final approval.

#### 16 IX

17 On April 8, 1974 the final EIS as accepted on March 25, 1974, and  
18 a cover letter for the EIS was approved by the County Commissioners.  
19 There was no redraft of the EIS that incorporated any additional  
20 information.

21 The County Commissioners indicated considered the continuation of  
22 the original permit. Objections were made at this time to the issuance  
23 of the permit by several parties at the hearing. Specific objections  
24 were made as to the lack of uniform means of determining dock lengths,  
25 inconsistency of the project with RCW 90.56.020, the economic impact,  
the aesthetic impact, safety, and the possible proliferation of pile-

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1 type piers in the area. The alternative of mooring buoys and swinging  
2 rafts was suggested. After hearing these objections, the Commissioners  
3 decided to postpone the decision on the matter until April 15, 1974 in  
4 order to allow themselves sufficient time to study the information  
5 received

6 X.

7 A hearing for a final decision on the issuance of a substantial  
8 development shoreline permit to TFBC was held on April 15, 1974. The  
9 minutes of the meeting summarized the action taken.

10 The Board members, Planner and Prosecutor having visited the  
11 site of the proposed construction prior to the hearing, having  
12 considered the environmental impact statement adopted by this  
13 Board; which environmental impact statement consists of the  
14 draft environmental impact statement prepared by Mr. David  
15 Desvoigne, the comments thereto by individual reviewers and by  
16 state and federal agencies, the county's response to those  
17 comments and the covering letter prepared by Mr. James E  
18 Connolly, Mason Regional Planning Director; and having  
19 considered the statements of the public and of the attorneys for  
20 the applicant and for the objectors. I move to confirm our  
21 previous issuance of Shorelines Management Permit No. 24,  
22 subject to the conditions imposed upon that permit by the  
23 Shorelines Hearing Board as set forth at page 11 of the order  
24 entered by the Shorelines Hearing Board in SHB Nos. 45 and  
25 45A on August 10, 1973. The motion was seconded by  
26 Commissioner Bariekman and carried unanimously.

19 The Shorelines Management Permit No. 24 was confirmed in accordance  
20 with the above decision and reissued subject to the Order of this Board  
21 in SHB Nos. 45 and 45-A (August 10, 1973). Public notice of this action  
22 was duly made. Appeals from the decision of the Commissioners, which  
23 were consolidated for hearing and decision, were made by three  
24 appellants to this Board.

25 XI.

26 The plan for the project as set forth in the Corps of Engineers'

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1 people in the area. The proposed pier would be built at  
2 Point No. 24 and pier built at the end of the existing  
3 bulkhead and pier and the driveway of 270 Hood Canal. Hood Canal.  
4 Under the plan, the existing 270 pier is to be replaced by 25  
5 additional piers and the conversion of the existing railway to a rigid  
6 pier for a walkway extending 130 feet into Hood Canal. The surface of  
7 the walkway would be 13.8 feet above mean low water level. The walkway  
8 would be protected on both sides by concrete safety handrails. One  
9 (modified by SPS Nos. 15 and 15-2, 120 foot finger float could be  
10 installed extending eastward from the end of the pier.

11 The pier could be built in relatively shallow water upon a delta.  
12 Because of the shallow depth and gently sloping ground, the proposed  
13 pier extends 400 feet into Hood Canal where it reaches deeper water.  
14 This proposed pier, if built, would be the second longest pier in the  
15 vicinity. The longest pier in the area, known as Fraser Dock, extends  
16 510 feet into Hood Canal. The proposed pier would cost approximately  
17 \$15,000.

#### 18 FINDINGS

19 The evidence is undisputed and all parties agree that the scenic  
20 beauty of Hood Canal is of considerable importance to the area,  
21 mountains and timber combine to produce a pleasing natural setting  
22 which people flock for recreational purposes during the summer months.  
23 The number of year-round residents in this area is increasing, partly  
24 as people flee suburbs for a homecoming atmosphere. In the 1970s  
25 facilities alone, year-round residences have increased in number from  
26 36 homes in November, 1973 to 48 homes at the date of this report.

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Correspondingly, improved lots (with no or better) have increased from 150 to 173 during the same time period. With the increase use of the shoreline, those persons who reside in the area before TWBC was formed, such as the Brachvogels, have experienced less privacy. For example, water skiers from the TWBC facility occasionally land on their property.

#### VIII

Construction of a pile-type pier of the nature and length contemplated by respondent TWBC would deprive the adjoining property owners and the public of the unobstructed panorama of the water line and shores of the Hood Canal or a permanent barrier. In lieu of the natural view, the neighbors and public would see a long pier with exposed pilings and support brackets at low tide. While this sacrifice is acceptable to TWBC, it is not acceptable to the adjoining property owners.

#### XIV

The draft EIS did not discuss the effect of noise on the whole area, the alternative of removal of the existing dock, aesthetics, navigation, safety, land value, or social and economic factors. No cost evaluation of the pier versus floating dock arrangement was made nor was the effect of constructing a dock in the center vis-a-vis the impact upon the adjoining property owners considered. However, the County Commissioners were apprised of these objections and did consider them at numerous hearings on the EIS.

#### XV.

TWBC has indicated an intent to encourage and regulate the growth of oysters and clams in the area as an indirect result of having a new

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1 pier. There is no evidence to suggest that the pier would  
2 increase the population of age children who would be attracted  
3 to the pier. Outermost beach would be more exposed to shore if  
4 a pier were built. A pier is not a safe place for children. The proposed  
5 pier is no different from the pier at the end of a pier along littoral  
6 drifts to provide a safe place for children to play on beach by a  
7 floating dock.

8  
9 The proposed pier would be used only by 100 members  
10 and guests. The pier would be a safe place for children. The main  
11 child-attraction from the pier would be the possibility of children  
12 jumping or falling from the pier into the water. Boating hazards would  
13 not increase appreciably as compared with the existing floating dock if  
14 the pier is constructed.

15  
16 A bill (S. 1000) passed by the House on Dec. 10, 1975 was  
17 Act was introduced to the Senate on Dec. 10, 1975 and  
18 was referred for a public hearing. The bill was referred to the  
19 (Appropriations Committee) as particularly referred by the Department of  
20 Ecology on January 17, 1976.

21 The bill provides

22 (a) The bill provides

23 (1) To the extent possible, traffic on the beach shall be restricted to the  
24 of emergency piers and other structures which are necessary for  
25 the functioning of the subdivisions along the beach.

26 (2) The bill provides that the bill shall be amended to provide that  
27 (a) The bill provides that the bill shall be amended to provide that  
28 (b) The bill provides that the bill shall be amended to provide that  
29 (c) The bill provides that the bill shall be amended to provide that

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10211.

Wason County Ordinance No. 331, which is the State Environmental Policy Act, Chapter 43.21C RCW as to unincorporated areas of Wason County. The Ordinance was applicable to the entire EIS process in this matter. See Section 10, Ordinance No. 331.

III.

The existing development at Twisp Falls Beach Club, i.e., the floating walkway, was installed in 1965 without a U. S. Army Corps of Engineers' Permit or a State Hydraulic Permit. The facilities have been in continuous use since that time and no record of violation has been made by the U. S. Army Corps of Engineers or the State of Washington. WSCC does not have a permit pursuant to the Shoreline Management Act of 1971 for its existing dock.

Any Conclusion of Law heretofore reached which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Shorelines Hearings Board comes to these

#### CONCLUSIONS OF LAW

The main problem presented to this board involves the question of whether or not the WSCC should prepare the EIS when it is required to. Counsel have not cited any Washington cases in point nor have we been able to find any. However, we can examine the Federal cases in point. Quilley v. Coast v. Board of Assoc. 52 Pn.2d 475, 483 (1975), C. B. Poe, Jr. and C. W. Dean, The State Environmental Policy Act of 1971 and its 1972

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